Q. Excuse me just a minute. And of those drawings could you tell us what part was income to Mr. Costello? A. Well, the drawings wouldn't have anything to do with the income. It would be the income as reported by the return.

Q. That is why I am asking. It is a fact, is it not, that the drawings from a partnership have no relation to income; the drawings might be either more or they might be less; isn't that right? A. They may be more or less than the taxable income, yes, sir.

Q. Well, I guess you have already given us the income as shown on the returns, so we can skip the income because it would be just repetition, and give us the drawings? A. The drawings from December—fiscal year December '44 through November 30, 1945, $63,000.

The drawings from fiscal year December 1st, (578) 1946 through November 30, 1946, $25,875.

The Court: What is that?

The Witness: Twenty-five thousand—

The Court: No. But the date was December 6th?

The Witness: December 1st, 1945—

The Court: '45.

The Witness: Through November 30, 1946, $25,875.

Q. Did you give 1943? A. 1943 is from December—wait.

The Court: He gave the figure from December 1943 through November 30, 1944.

Was there a fiscal year prior to that?

The Witness: Yes. The drawings for the fiscal year ending November 30, 1943 was $31,950.

Q. And on what account in the book do you refer? A. You have drawing accounts, distribution to the partners for all years, and the first year ending November 30, 1943, there is one entry charging the partners with the drawings.

Mr. Fennelly: Would your Honor take a recess now so I can get those two checks and I will be finished then with this subject, so I don't have to go back?

The Court: Very well. We will take our recess now.

(579) (Short recess.)

(Jury present.)

Mr. MacMahon: May the record note, your Honor, that I hand Mr. Fennelly a series of checks, which are all that are in Government's possession, of the type he has requested?

Mr. Fennelly: While we are looking for those, your Honor, I will go on; shall I?

The Court: Yes.

By Mr. Fennelly:

Q. Mr. Murphy, did you appear before the grand jury to testify, that is, the grand jury that returned the indictment in this case? A. No, sir.

Q. Did you produce any of your work papers? A. To the grand jury?

Q. Yes. A. No, sir.

(Marked Defendant's Exhibit P for identification.)

Charles B. Murphy—for Government—
Preliminary Examination by Mr. MacMahon

Q. And how long have you been in New York as a witness in this present trial? A. I arrived—subpoenaed to appear on April 5.

Q. Have you been working with the United States Attorney's office in—during the period since you came here? A. I have, sir.

Q. Every day? A. No, I have missed some days. I would be excused Thursdays.

(580) Q. What? A. I was excused from Thursday until Monday, this present Monday.

Q. Did you work any evenings? A. Yes, sir.

Q. Any Saturday? A. No, sir.

Q. In this time you have been working with them, you prepared these schedules that were offered yesterday in evidence? A. I did, sir.

Q. I show you Defendant's Exhibit P for identification and ask you whether or not you signed that as a witness? A. Yes, sir.

Q. And is that a partnership return—the partnership agreement, the first one, Crescent Music Company? A. Yes.

Mr. Fennelly: I offer it in evidence.

(A pause.)

Mr. MacMahon: May I examine the witness preliminarily about this?

The Court: Yes.

Preliminary Examination by Mr. MacMahon:

Q. Did you ever see Jennie Eisenberg? A. No, sir.

Q. Do you know who she is? A. She was Jack Joffe's mother-in-law.

Charles B. Murphy—for Government—
Preliminary Examination by Mr. MacMahon

Q. Was Loretta Costello present when this was signed? A. I think she must have been, sir. I have (581) to recollect. I wouldn't recollect now.

Q. You are not certain? A. I am not certain. I think—I am not certain whether she was or not.

Q. Do you know where the original of this document is? A. No, I don't.

Q. Have you made a search for the original? A. I have, sir.

Q. Did you see any of the money recited in here change hands? A. Let me see what it says.

The Court: I thought this was directed to the admissibility of the document.

You don't have to answer that question.

The Witness: What's that?

The Court: You don't have to answer that last question.

I allowed you to examine preliminarily, to go into matters of competence. If you are—

Mr. MacMahon: No objection as to competence.

The Court: —to urge objection on other grounds—

Mr. MacMahon: No objection as to competence.

The Court: Very well.

(Defendant's Exhibit P for identification received in evidence.)

Mr. Fennelly: I will not read all this, with (582) the Court's permission, but paraphrase it and save a lot of time. It is a partnership agreement, forming Crescent Music Company, it is dated New Orleans, November 19, 1943, between Mrs. Loretta Costello, Jacob Joffe and Mrs. Jennie Eisenberg.

By Mr. Fennelly:

Q. Now, there was another witness to that besides yourself, whose name is opposite Mrs. Costello's name as a witness, and who is that? A. Albert Koorie.

Q. And he is a lawyer in New Orleans? A. Yes, sir.

Mr. Fennelly: It appears that the back of this is Albert B. Koorie, attorney at law, and his address in New Orleans.

Q. So that in Louisiana Mint Company the first—

Mr. Fennelly: Excuse me. Strike it.

Q. In Crescent Music Company the first partnership was Mr. Joffe, Mrs. Eisenberg and Mrs. Costello? A. That is right, sir.

Q. They were partners in that business prior to the time that Mr. Kastel became a partner? A. Yes, sir.

Q. How long after November 1935, which is the date of this first partnership agreement, was it that Mr. Kastel became interested in Crescent Music Company? A. September 15, 1944.

(583) Mr. Fennelly: Now, would the Government produce all of the checks and checkstubs of Crescent Music Company, please, both partnership and corporation?

Mr. MacMahon: I can't, your Honor; they are not in court. Mr. Fennelly did not ask me for these during the recess. We would have been glad to furnish them had he done so.

The Court: Is there some other matter that you could go on with now? Because I suggest that, after the recess today, you give Mr. MacMahon some kind

of a schedule of documents which you expect are in the papers which came up from New Orleans and go down and look at them yourself if you want, and have them here then for the next session.

Mr. Fennelly: I shall, your Honor. If I may say, Mr. Pierpoint of the Government attorneys asked me yesterday afternoon what I would want and I told him I would want all of the papers of all of these companies from New Orleans.

Mr. MacMahon: Your Honor, that was the three and a half ton problem that you ruled on this morning.

The Court: Yes. You suggested that we have all of them here this morning. I am afraid if we do, we will have to move to another courtroom.

Q. Let me take you back a minute to this work that (584) you did for the Government. You told me you didn't work on Saturday. Did you work on Sunday for them? A. I came down Sunday afternoon; yes, sir.

Mr. Fennelly: Now, would the Government please let me have the income tax returns of Crescent Music Company which were not introduced in evidence or marked for identification?

(Papers handed to Mr. Fennelly.)

Mr. Fennelly: You have given me those that have been marked. The ones I requested are those that you have not marked.

Mr. MacMahon: Your Honor, I am advised that the Government has a certificate that other returns have been destroyed, and we don't have it with us in court.

The Court: In other words, the ones that are now marked, either for identification or in evidence, you say are all those in your possession?

Mr. MacMahon: Yes, your Honor.

The Court: Very well.

Q. Now, Mr. Murphy, in your work papers which the Government has, would you look and see whether or not there are copies of income tax returns of Crescent for the fiscal period ending March—rather, July 31, 1944? A. All right, sir.

(585) Q. And also for a short period ending September 15, 1944.

Mr. Fennelly: Could we have Mr. Murphy's work papers, please?

(Papers handed to Mr. Fennelly who hands them to the witness.)

The Witness: All right, sir.

Q. Do you find them? A. Yes, sir.

Q. Are those copies that you prepared? A. Yes, sir, either I or under my supervision.

Q. Are they true copies of the originals? A. Yes, sir.

Q. That you filed with the Government? A. Yes, sir, pencil copies.

Q. Will you take them out of the folder, please, and let me have them, and what exhibit number is that you are taking it from? A. Exhibit 116.

Q. For identification. A. For identification.

Q. Government's Exhibit 116. A. Well, these are the State returns attached.

The Court: These are copies of Crescent returns?

The Witness: Yes, sir.

Mr. Fennelly: I offer in evidence a copy of the Federal income tax return, partnership return, of Crescent Music Company for the fiscal period beginning August 1, (586) 1944 and ending September 15, 1944.

Q. There is attached to it a State return which I don't want. Would you mind—

Mr. MacMahon: Your Honor, may I suggest that these be marked? It will be a little difficult to follow them in the record without it.

Mr. Fennelly: I am offering it in evidence.

The Court: Show it to Mr. MacMahon.

Mr. MacMahon: Your Honor, subject to the witness' clarifying the addresses on page 4, I have no objection.

(Defendant's Exhibit Q received in evidence.)

Q. And have you a copy of another Federal income tax return for Crescent Music Company? A. August 1st, 1943 through July 1st, 1944.

The Court: August 1st, 1943 to wnen?

The Witness: July 31, 1944.

Q. And is that a copy of the original? A. That is the pencil copy, yes, sir.

Q. And you prepared it? A. Yes, sir, either I or my office under my supervision.

Mr. Fennelly: I offer in evidence copy of partnership return, Crescent Music Company, August 1, 1943 through July 31, 1944.

(587) Mr. MacMahon: No objection.

(Marked Defendant's Exhibit R in evidence.)

Q. And, Mr. Murphy, you took Defendant's Exhibit R from what— A. 116—Government's 116.

Q. For identification? A. For identification.

Mr. Fennelly: Might I have Mrs. Costello's income tax return for—Exhibit 10, please—1943?

Mr. MacMahon: You have Exhibit 10.

The Court: You have Exhibit 10 or you had it before. That is the joint return.

Do you want Mrs. Costello's return for '44?

Mr. Fennelly: That is '43; that one.

The Court: '43 was the joint return, according to my notes.

Mr. Fennelly: That is right.

The Court: Mrs. Costello's return in 1944, if that is what you want, is Exhibit 9.

Mr. Fennelly: I want that too. That is Exhibit 9, I believe.

Q. Excuse me, Mr. Murphy, have you any tax returns up there? A. No, sir, but there may be some right there (indicating).

Mr. Fennelly: Here it is.

Q. I show you Defendant's Exhibits R and Q. Would you tell me whether or not they show the partners (588) of Crescent Music Company? A. Yes, sir.

Q. Who were the partners? A. Mrs. Jack Joffe, Mrs. Jennie Eisenberg, Mrs. Loretta Costello.

Q. Do they show a share of income to Mrs. Costello? A. Yes, sir.

Q. For what period is that? A. This is for the period of August 1, 1943 through July 31, 1944.

Q. Would you tell us what it is? A. $6,765.06.

The Court: What is that?

The Witness: $6,765.06.

The Court: That is from Exhibit R?

The Witness: Exhibit R.

Q. I show you Mrs. Costello's individual income tax return for the calendar year 1944—excuse me. It appears to be a fiscal year, January 1, 1944 ending January 1, '45. Would you tell me whether or not it reports in there income from Crescent Music Company? A. Yes, sir.

Q. What is the amount? A. 7,714.43 and a long-term capital gain of 3,030—

Q. No, I am just talking about Crescent. A. It shows—

Q. Is this on Crescent? A. On Crescent, yes.

Q. Go ahead. A. Of $3,033.90, taxable profit.

The Court: What you just read us was from (589) Exhibit 9, was it?

The Witness: Exhibit 9.

Q. I show you Government's Exhibit 125, which is the partnership return of the Crescent Music from September 1, 1945, ending August 31, 1946. A. Yes, sir?

The Court: What exhibit is that?

The Witness: 125.

Mr. Fennelly: Could I have Exhibit 5?

(Exhibit handed to Mr. Fennelly.)

Q. And does Mrs. Costello appear as a partner of Crescent Music Company? A. Yes, sir.

Q. What is the amount of income attributable to her on that return? A. 15,864.37.

Q. I show you Mrs. Loretta Costello's individual return for the calendar year 1946, Government's Exhibit 5. Will you tell us whether or not there is reported on that return income from the Crescent Music Company? A. Schedule E reported 15,864.36.

Q. That is the same amount attributable to her reported in the partnership return, is that right? A. Yes, sir. I might have said "37" in the partnership return. Hers is 36 cents.

Q. I show you Government's Exhibit 126, partnership return of Crescent Music Company, September 1, 1946 to (590) August 31, 1947. Would you tell us whether or not there is income reported there for Mrs. Costello as one of the partners of Crescent Music Company? A. It does show—shows a loss.

Q. A loss? A. Yes.

Q. How much, sir? A. A total loss of 19,431.96.

The Court: Let me see that.

(Witness hands paper to the Court.)

Q. I show you Government's Exhibit 3 the tax return for the year 1947 for Frank a l Loretta Costello. Would you tell me whether or not thei is reflected in that return the loss of Crescent Music Co pany that you have just referred to? A. Yes, sir, Sche le E, line 1, 9,715.98.

Q. I show you Government's Exhibit 127 for identification, Crescent Music, Inc.—

The Court: 127, Mr. Fennelly?

Mr. Fennelly: 127.

Q. —which is the Crescent Music Company, Inc. return for September 1, 1947, ending August 31, 1948. Now, that return, I guess, doesn't show on its face distribution to a stockholder, Mrs. Costello, does it? A. No, sir, it doesn't show. It is a corporation return.

(591) Q. All right. Well, now, would you please refer to the books of Crescent Music Company, Inc. and tell the amount, if any, paid to Mrs. Costello during that period, and tell me what book you would need, would you? A. The general ledger should give it to us.

Q. I show you Government's Exhibit 115 for identification. Is that what you want? A. You want the period September 1st, 1947 through August 31, 1948?

Q. That is right. The period shown on the return. A. There was a payment of $12,258.

Mr. Fennelly: Can I have Exhibit 2, please?

(Exhibit handed to Mr. Fennelly.)

Q. Well, now, would you give me the amount for the calendar year 1948, if any? A. Well, the Crescent Music stopped at that time, and it was sold out.

Q. And was a loss reflected? A. Yes, sir. The return shows a loss of—the photostatic figures are had to make out—$88,498.52.

Q. And I show you Government's Exhibit 2, which is the joint return of Frank and Loretta B. Costello for the year 1948, and ask you whether or not that loss is reflected, and I refer you to page 2 of that exhibit. (592) A. It reflects a loss on her loan account of $14,027.79, which is the same as in the general ledger of Crescent Music.

Q. I didn't hear the end of your answer. A. I say, it reflects a loss on her loan account of $14,027.79, which is the same as on the books of Crescent Music Company, Inc. in Schedule E.

. And the book of Crescent Music Company that you referring to is what? The general ledger? A. General ger, Exhibit 115.

. For identification. A. For identification.

. Government's exhibit.

The Court: Very well. We will suspend now until 10.30 on Monday morning.

I imagine you will have other things to talk about between now and then, but even if you run short don't talk about the evidence in the case, and just keep your minds completely open until all the evidence is in and the case is submitted to you, if it is.

In the meantime I hope you all enjoy the holiday very much.

10.30 Monday morning.

(Adjourned to April 19, 1954, at 10.30 a.m.)

Charles B. Murphy—for Government—Cross

(593) New York, April 19, 1954;
16.30 o'clock a.m.

Trial continued.

(Jury in box.)

CHARLES B. MURPHY resumed.

The Clerk: If there are any witnesses in the courtroom at the present time they will please retire to the witness room.

The Court: Very well, Mr. Fennelly.

Cross Examination by Mr. Fennelly (Continued):

Q. Mr. Murphy, I think we left off on last Wednesday afternoon on the subject of Crescent Music Company and I believe you testified that there was a payment to Mrs. Costello of some $12,258, in 1948? A. There was a payment to her in 1948.

Q. You were referring to some book, were you not, of Crescent Music Company? A. That is right, the ledger, sir.

Mr. Fennelly: Could I have that ledger sheet?

Q. Government's Exhibit 115 for identification (594) (handing). Now, would you tell us what that item was? A. That was her pro rata share of the cash price paid for the business.

Q. On the sale of the assets? A. That is right, sir, net assets.

Q. And that was not profit? A. It was charged to her loan account.

Mr. Fennelly: Would the Government let me have Defendant's Exhibits R and S which I don't believe were returned to us? May I also have Government's Exhibit 9?

The Court: Would you wait just a minute, Mr. Fennelly?

What were the defendant's exhibits you asked for? R and S?

Mr. Fennelly: I asked for R and S. It is R and Q I believe.

The Court: Yes. There isn't an exhibit S, is there? All right. R and Q. And then 9 you asked for?

Mr. Fennelly: Yes.

The Court: Yes. Very well. I just wanted to see what the exhibits were that you were talking about.

Q. Now, Mr. Murphy, last week when you testified as to the amount of income reported by Loretta Costello in the year 1944, Crescent Music Company, I believe you (595) gave a figure which was greater than the amount that you testified the Crescent Music Company paid to her, and I think it resulted from your only looking at one of these two Exhibits R and Q.

Now, would you tell me whether those are the copies, R and Q, of the Crescent Music Company return covering part of the fiscal year 1944? A. It is a copy of the partnership return for the fiscal period August 1st, 1943 through July 31, 1944, and a copy of the final partnership from August 1st, 1944 through September 15, 1944.

Q. Will you tell us the total amount of the income reported on those two partnership returns R and Q attributable to Mrs. Costello? A. Defendant's Exhibit R shows an income to Mrs. Loretta Costello of $6,765.06.

Defendant's Exhibit Q shows a distributable share to Mrs. Costello of ordinary income of $949.39 and long-term gain of $3,303.90.

Q. Now, the total of the two income items on R and Q totals $7,714.43, does it not? A. Just a moment, sir.

The ordinary income items total $7,714.43.

Q. That is the same amount reported by Mrs. Costello, is it not— A. Schedule E—

(596) Q. —on her return, Exhibit 9? A. Schedule E, income from partnerships, shows Crescent Music income of $7,714.43.

Mr. Fennelly: In tracing out the income from Crescent Music Company to Mrs. Costello, I find that I skipped the year 1945.

May I have Exhibit 7, please?

(Exhibit handed to Mr. Fennelly.)

Q. I show you Government's Exhibit 124, which is the income tax return for Crescent Music Company for the fiscal year ending August 31, 1945. Will you tell me the amount of income reflected in there to Mrs. Costello? A. Shows Mrs. Costello having $17,595.51.

Q. I ask you to look at the income tax return of Mrs. Costello for the year 1945, Government's Exhibit 7, and tell us whether or not the same amount is not reported on that return? A. On Schedule E, Crescent Music, shows income of $17,595.52.

Q. Same amounts, aren't they? A. Yes, sir.

Q. By looking at the books of Crescent Music Company, can you tell us Mrs. Costello's drawings for the years 1944 through 1946? A. I will have to have the other ledger.

Mr. Fennelly: The Government hands me Exhibit 113 for identification.

(597) Q. (Handing exhibit to the witness.) A. Is that the calendar year you are speaking of, Mr. Fennelly?

Q. Any way you can give it to me. A. Well, from the period July 23, 1943 through September 15, 1944, Mrs. Costello had drawings of $3,400 and a cash division of $1,288.89.

The Court: Twelve hundred?

The Witness: And eighty-eight, eighty-nine.

A. (Continuing) Making a total for that period of $4,688-.89.

And the books show that from November 2, 1944 through August 2, 1945 Mrs. Costello had drawings of $19,750; shows from September 1945 to July 1946 of $19,500; and the capital account on September 28 shows a disbursement of $350.

The Court: What year?

The Witness: 1944.

A. (Continuing) Then on August 31, 1948 she received $12,258.

The Court: Wasn't your question limited to the period up to and including 1946?

Mr. Fennelly: '46, yes.

The Court: That last figure was a figure in '48.

(598) Mr. Fennelly: I have already covered '48. He testified.

The Court: That is what I thought. That is why I asked the question.

Are there any other figures for the period from '44 through '46?

The Witness: That is all I see, sir.

Q. Have you given us the total for '46? A. The period September 5—September '45 through July '46 totals—shows drawings of $19,500.

Q. Mr. Costello was not a partner of Crescent Music Company when it was a partnership, nor was he a stockholder when it was a corporation, nor was he an officer or director, was he? A. Not to my knowledge, sir.

Q. And you have knowledge, have you not, from handling the books? A. The records and books would show Mrs. Costello as a partner.

Q. The partnership agreement that I showed you the other day—

Mr. Fennelly: I believe the Government has that too, Defendant's Exhibit P.

Q. —I think the prosecutor on a preliminary examination asked you whether or not—asked you where the original was. That is an original, is it not (599) (handing paper to witness)?

Mr. MacMahon: Your Honor, I submit the document speaks for itself in that respect.

The Court: He may—

Mr. MacMahon: It is, plainly, a carbon.

The Court: He may ask him about it.

A. This is apparently a carbon copy of the agreement.

Q. Did you ever hear of partnership agreements, where there are three partners—signing them in triplicate? A. Yes, sir, I have.

Q. Isn't it an original even though—typewritten copy is a carbon, isn't that an original when they sign it?

Mr. McMahon: I object.

The Court: Sustained. We are quibbling about a word.

Mr. Fennelly: I am arguing about the—excuse me—about the nature of the prosecutor's questions, your Honor.

The Court: It appears on the exhibit itself that all those signatures are original signatures.

Mr. Fennelly: That is right.

The Court: That they aren't the copies of signatures. They aren't; it is obviously not conformed.

Q. Mrs. Costello signed that in New Orleans? She was down there, wasn't she? A. I have refreshed my (600) memory since the other day, sir, and Mrs. Costello was in New Orleans and did sign this. I haven't seen it in ten years.

Q. And you send reports to Mrs. Costello from time to time in connection with Crescent Music Company, did you not? A. I did, sir.

(Marked Defendant's Exhibits S, T, U, V and W for identification.)

Q. I show you Defendant's Exhibits S to W for identification and ask you whether or not they are letters that you wrote to Mrs. Costello pertaining to Crescent Music Company? A. Yes, sir.

Q. And you used to send Mrs. Costello regularly, did you not, about once a month, a financial statement of the company? A. They normally went out about once a month, yes, sir.

Q. You sent them to Mrs. Costello, did you not? A. That is right, sir.

Mr. Fennelly: I offer these in evidence.

Mr. MacMahon: No objection.

(Defendant's Exhibits S, T, U, V and W for identification received in evidence.)

(Mr. Fennelly read to the jury Defendant's Exhibits S to W.)

Mr. Fennelly: Now, would the Government let me (601) have the checks and checkbooks of the Crescent Music Company, please?

Mr. MacMahon: Your Honor, we don't have all of them in court. Again, Mr. Fennelly had the opportunity over the weekend and did not avail himself of it.

The Court: Did you mean such checks only as have been put in evidence or did you mean any other checks?

Mr. Fennelly: No, all of the ones which are here in this courtroom.

The Court: That doesn't help me very much when you say "here." Do you mean those that were put in evidence or marked for identification?

Mr. Fennelly: No. I want those that have not been marked.

The Court: Well, then, Mr. Fennelly, I want you to tell me whether between the last recess and this morning you or anybody on your behalf has made any effort to get the Government to bring you to the place in the building where those documents are and have you look at them and identify those that you wanted so that they might be produced in accordance with the instruction that I gave on Wednesday?

Mr. Fennelly: No, your Honor, I haven't; I have been busy on other matters pertaining to this case.

(602) The Court: I haven't any doubt that you have been busy, but I think it is quite unfair and

improper for you to call on the Government now to produce them. I tell you now that if you will make up a schedule of what you want that you have your associate or somebody working with you go there, and the Government represents that all the documents that were brought from New Orleans are here in this building and that they are available to you or anybody you designate to look at them. Please pass on to something else now because obviously what you are looking for is not here.

Mr. Fennelly: Those I would like to have marked were all of the checkbooks.

The Court: You will get no direction to the Government in such general terms. This is about the fifth time that I have said that. I tell you now you are free to look at all of the documents that are here, pick out what you wish and have them marked, and offer them all if you wish. I will issue no direction to mark anything in general terms.

Mr. Fennelly: If your Honor please, I have stated specifically that I wished the checkbooks and checks of the Crescent Music Company.

The Court: For what year?

Mr. Fennelly: For all of the years here (603) involved.

The Court: If you will, tell us what years you wish.

Mr. Fennelly: Starting from the beginning, in 1943 through 1948 I believe is the last year, Mr. Murphy?

The Witness: Yes, sir. It was sold in 1948.

The Court: Are they here, do you know?

Mr. MacMahon: Your Honor, we have some, but not back that far. I believe we have in court commencing in September—

The Court: No, I mean among the records that were brought here.

Mr. MacMahon: They are among the records, yes.

The Court: Very well. Will you please delegate somebody now to get to work on them and have them here at the opening of the afternoon session?

Mr. MacMahon: Yes, your Honor.

(Marked Defendant's Exhibit X and Y for identification.)

Q. Mr. Murphy, I show you Defendant's Exhibit X and ask you whether or not that is a letter and a financial statement of Louisiana Mint Company which you sent to Mr. Frank Costello? A. It is a summary of the cash receipts and the profit and the cash for the month of (604) December 1945.

Q. Did you send it to Mr.—

The Court: Pardon me. I didn't get that answer.

(Answer read.)

A. (Continuing) And the cash disbursements.

Q. Did you send that to Mr. Costello? A. Yes, sir.

Q. I show you Defendant's Exhibit Y and ask you if that is another statement of cash receipts and disbursements for the Louisiana Mint Company? And what month is that one? A. January '46.

Q. Did you send that to Mr. Costello? A. I couldn't remember whether I did or not, Mr. Fennelly. I should have in the normal course sent him one.

Q. Isn't it a fact that you sent them to Mr. Costello every month? A. That is, normally they went out every month, yes, sir.

Mr. Fennelly: I offer them in evidence.
Mr. MacMahon: No objection.

(Defendant's Exhibits X and Y for identification received in evidence.)

Q. Now, Mr. Murphy, may we turn our attention for a moment to the Beverley Country Club? Do you (603) remember the day you last testified in connection with Mr. Costello's income tax return for the year 1948 there was an item of some $20 that you couldn't explain the difference between the return and the amount you stated he had received from Beverley? A. I think that was an interest item.

Q. That is right. A. Yes, there was some difference on it.

Mr. Fennelly: Have you the Beverley check, please, that being Exhibit 158?

(Exhibit handed to Mr. Fennelly.)

Mr. Fennelly: Where is the check that was a duplicate of this? What number is that?
Mr. MacMahon: You mean the voucher?
Mr. Fennelly: Has a voucher attached to it.

(Exhibits handed to Mr. Fennelly.)

Mr. Fennelly: 183, it is.

Q. Now, the amount paid by Beverley to Mr. Costello in 1948 as interest amounted to $3,140.52? A. That is right, sir.

Q. On his return I notice that there is reported a less amount by $20; there is reported $3,114.52, is that right? A. Yes, line 4 of the return.

Q. In the end of December 1948 did Mr. Wolf write you for information about the amount to report in Mr. (606) Costello's income tax return? A. Normally he would write me towards the end of the year or the beginning of the following year.

(Marked Defendant's Exhibit Z for identification.)

Q. Mr. Murphy, I show you Defendant's Exhibit Z for identification. Did you write that letter to Mr. Wolf in December 1948? A. Yes, sir, I did.

Q. And how much interest did you tell him that Mr. Costello received from Beverley in that year? A. I said interest, $3,114.52 in the letter.

Q. That is the amount that appears in Mr. Costello's income tax return, is it not? A. Yes, sir.

Q. Your letter apparently was in error by some $20, is that right? A. There is no question about that, sir. Probably a typographical error.

The Court: May I see it?

(Witness hands paper to the Court.)

Mr. Fennelly: There is only one other part in this I would like to read to the jury.

The Court: It is not in yet.

Mr. MacMahon: It is not in evidence.

Mr. Fennelly: I will offer it in evidence then.

Mr. MacMahon: No objection.

(Marked Defendant's Exhibit Z for identification in evidence.)

(607) Mr. Fennelly: I won't read this all to the

jury, your Honor. I just wanted to read the last two paragraphs. It is a letter from Mr. Murphy to George Wolf, 30 Broad Street, New York, re Mr. and Mrs. Frank Costello. It is about Beverley.

"The corporation received $30,000 for the net assets"—

Excuse me. This part is about Crescent Music.

"The corporation received $30,000 for the net assets and the said $30,000 was distributed to the stockholders, and I have applied this distribution against the loan account. Mrs. Costello received 40.86 per cent or $12,258. The remaining went to Mr. Kastel and Mr. McQueen. Therefore, in my opinion, the difference in the loan account should be a loss on bad debts, and the capital stock invested should be a capital loss. Final return of Crescent Music Company, Inc. has not been filed as of this date. Very truly yours."

That is all with this witness.

Mr. MacMahon: May we take a recess at this time?

The Court: You may.

Before we recess, I would like to know what the situation is with respect to these checks.

Do you desire to question this witness about the checks that you have asked the Government to produce?

(608) Mr. Fennelly: Merely for identification, that's all.

The Court: Very well. I assume that is a matter that yourself and Mr. MacMahon may work out as long as the records are here. I just wanted to find out what the status of the witness was.

Are you finished with this witness?

Mr. Fennelly: Yes.

The Court: Do you have any redirect with this witness or do you desire to wait until after the recess, to decide it?

Mr. MacMahon: After the recess I will have some redirect.

The Court: We will take our recess now.

(Jury retires.)

(Short recess.)

(609) *Redirect Examination by Mr. MacMahon:*

Q. Now, Mr. Murphy, referring to the Louisiana Mint Company were there times when you did not transmit to Mr. Costello his drawings from that company? A. Yes, sir, I am sure of that.

Q. And on those occasions who did transmit? A. I wouldn't know. I imagine Mr. Kastel gave it to him. I wouldn't know.

Q. How did you get the information which you entered in your books? A. I would get that as a rule from Mr. Kastel, the distribution.

Q. Mr. Murphy, with reference to some drawings that were made in January 1946 and December of 1945, would you refer to your ledgers and journals, which are 143 for identification and 144 for identification, and tell me if there was a distribution to partners in December of 1945 and how much Mr. Costello's share of that distribution was according to your books?

The Court: Will you repeat the question, Mr. Reporter?

(Question read.)

The Court: From what entity?

Mr. MacMahon: I beg your pardon?

The Court: From what entity?

Mr. MacMahon: From the Louisiana Mint Company.

(610) The Court: From the Louisiana Mint Company. Very well.

A. General journal 9 of the Louisiana Mint Company, Government's Exhibit 143, shows an entry on January 31, 1946, distribution to partners—.

Mr. MacMahon: The December one first, Mr. Murphy.

A. There is none in December.

Q. Go ahead with '46. A. It shows a distribution to partners of $45,000, cash $45,000. Underneath the journal entry is the notation distributed in December 1945, twenty-five thousand and distributed in January '46, twenty thousand. Mr. Costello's share of that would be $10,125.

Q. That is the total distribution? A. Total distribution.

Q. Your ledger notes, does it not, twenty-five thousand distribution in December '45? A. Yes, sir.

Q. What would Mr. Costello's share of that distribution be? A. May I make a calculation?

Q. Surely. A. $5,625.

Q. Now, his share of the January 1946 distribution. A. It would be $4,500.

By the Court:

Q. Didn't you just tell us that his share of the (611) '46 distribution was ten thousand? A. $10,125.

Q. What is this forty-five hundred share? A. This was a breakdown from December and January.

Q. What was the total amount that he got in December? A. The ledger doesn't show, your Honor. It shows one entry in January 31st, 1946.

Q. Yes, but Mr. MacMahon asked you to tell us what was the defendant's share of whatever was distributed in December 1945 and also to tell us what was the defendant's share of whatever was distributed in January 1946? A. Your Honor, I have one entry in here on January 31st which shows a total distribution and marked distributed in December 1945 and distributed in January 1946.

Q. From whatever you had before you, unless I am completely confused, I thought that Mr. MacMahon was trying to ascertain two figures; one, what did Mr. Costello get in December 1945, if you can tell us, and what did he get in 1946, January 1946, if you can tell us that. That will be two figures. A. Sir, I couldn't tell you at this time; I don't remember what it was.

The Court: Very well.

(612) *By Mr. MacMahon:*

Q. What—

The Court: Just a minute.

What is confusing to me and possibly to the jury is that we have got now, I made a note here, four figures. The first was forty-five thousand, then ten thousand, then five thousand, and four thousand five hundred. And I am completely confused as to what those figures represent.

Mr. MacMahon: Your Honor, may I endeavor to straighten that out?

The Court: If you would, please.

By Mr. MacMahon:

Q. Mr. Murphy, is there a notation in your journal or a distribution in December 1945 to all partners? A. Not in the month of December. It is in the journal for January 1946.

Q. But the notation refers to December, does it not? A. In the journal entry, distributed in December 1945, $25,000.

Q. What was Mr. Costello's share of that December distribution? A. It would have been five thousand—

Mr. Fennelly: Excuse me. I object to the prosecutor's question as stating something not in evidence, and that is the cause of the confusion. You see, what (613) the witness has been trying to say is that he doesn't know whether the actual distribution was made in—

The Court: That is exactly the point I am trying to come to.

Mr. Fennelly: That is right. That is why I object to the question.

The Court: The difficulty is, Mr. MacMahon, you say what would it have been.

Mr. MacMahon: No. I am saying what the books show.

The Court: Just a minute. The last question you asked the witness was what would Mr. Costello's share of that have been. If the book shows it, but the witness has said to us two or three times that the book doesn't show it.

Q. Does the book show, Mr. Witness, Mr. Murphy, the distribution to partners in December 1945? A. Mr. MacMahon, the book shows on January 31—

The Court: Now, look, the answer to that, Mr. Murphy, is yes or no.

The Witness: Your Honor, I am not trying to not answer. I can just tell you what the book shows. I don't know whether it was made in December or January.

Q. Is there a notation in your book—

The Court: Wait a minute. We are getting more (614) heat than light. Let us get this clear. These books are books that were kept under your supervision?

The Witness: That is right.

The Court: You do the best you can and tell us what they show.

Q. Mr. Murphy, is there an entry on page 9—what is this (indicating)? A. That is cash.

Q. —of Government's Exhibit 143 for identification distributed in December 1945, $25,000? A. Yes, sir.

Q. Now, what is Mr. Costello's share of that distribution? A. His share would have been $5,625.

Q. Now, is there an entry showing a distribution in January? A. In the same entry, distributed in January 1946, $20,000.

Q. What was his share of that distribution? A. Would have been $4,500.

The Court: You say it would have been. Don't your books show actually that it was distributed?

The Witness: Sir, the books—I don't remember now whether it was distributed in December or January—the books just show a compound entry as of January 31, your Honor.

The Court: Yes, but do they not say that they

represent something that was actually and physically (615) distributed?

The Witness: That is what the books say.

The Court: That is all you are being asked.

Q. Distributed in December of 1945 and in January 1946? A. Yes, sir.

Q. So that the record will be clear, the total of that is ten thousand—

The Court: Got it in there now. Better leave it alone. Tried to straighten it out before and we got mixed up. However, if you want to, I don't want to cut you short.

Mr. MacMahon: Will you mark that 147-A?

(Marked Government's Exhibit 147-A for identification.)

The Court: Is this a part of exhibit heretofore marked 147?

Mr. MacMahon: Yes, your Honor.

Q. Mr. Murphy, I show you Government's Exhibit 147-A for identification, which is a copy of a letter contained in Government's Exhibit 147 for identification. A. Yes, sir.

Q. And I ask you if that is a letter you sent to Mr. Frank Costello? A. It is, sir.

Mr. MacMahon: I offer it in evidence, your Honor.

(616) Mr. Fennelly: No objection.

(Government's Exhibit 147-A for identification received in evidence.)

Charles B. Murphy—for Government—Redirect

Mr. MacMahon: Your Honor, may I read this letter to the jury?

The Court: Yes.

Mr. MacMahon: Ladies and gentlemen, this is a letter from Charles B. Murphy to Mr. Frank Costello, 115 Central Park West, dated March 1, 1945:

"Enclosed find cashier's check No. 46,339 from the Louisiana Savings Bank & Trust Company in the amount of $5,007.56, dated March 1, 1945.

"This check represents your 22-1/2 per cent share of the March distribution of $5,625 less a deduction of $617.44 which represents hotel bill of Mrs. Costello. Mr. Kastel paid this bill and I refunded him the $617.44 out of the March distribution.

"Under separate cover I am mailing you February statement of Louisiana Mint Company."

Q. Mr. Murphy, the distribution you referred to there is a distribution of the Louisiana Mint Company, is it not? A. Yes, sir.

Mr. MacMahon: Would you mark these checks, please?

(617) (Marked Government's Exhibits 193 to 193-N for identification.)

Mr. MacMahon: Mark this 193-O.

(Marked Government's Exhibit 193-O for identification.)

Mr. MacMahon: And mark this 193-P.

(Marked Government's Exhibit 193-P for identification.)

Charles B. Murphy—for Government—Redirect

Q. Mr. Murphy, I show you Government's Exhibits 193-A through P. Would you tell me what they are? A. These are checks on the Crescent Music Company.

The Court: The checks are Exhibits 193, 193-A through N.

The Witness: Those are checks drawn on the Crescent Music Company.

Q. Are they all signed by you, Mr. Murphy? A. One is not.

Q. One is signed by Mr. Joffe. Do you recognize his signature? A. I think that is his signature, yes.

Q. Referring now to Government's Exhibit 193-O, tell me what that is? A. That is the checkstub on checkbook of Crescent Music Company.

(618) Q. For what day? A. July 1945.

Q. Payable, the checkstub? A. Mrs. Loretta Costello.

Q. And its number? A. It is 832.

Q. What is Government's Exhibit 193-P? A. That is check No. 832 on Crescent Music Company, checkstub dated August 7, 1944, payable to Mrs. Loretta Costello, $3,400 July distribution.

Q. O was a $1,500 distribution? A. A $1,500 distribution.

Q. Mr. Murphy, I show you Government's Exhibit 193 for identification—

Mr. MacMahon: I offer these, your Honor.

(619) Mr. Fennelly: I object to them as not binding on Mr. Costello. They are Crescent books in which he was neither an officer—

The Court: Crescent books for what period?

Mr. MacMahon: These occur, your Honor, prior to 1946, the drawings of Mrs. Loretta Costello, as

shown by the books. These books incidentally, your Honor—

The Court: That raises a question that I have been thinking about over the weekend, about the books prior to that period. They are offered for what purpose at this time?

Mr. MacMahon: At this time, your Honor, to show the total amount of the drawings, and we hope to trace those drawings—

The Court: Hasn't that already been shown on the examination?

Mr. MacMahon: Not the identical amounts of each drawing. Our purpose is to trace that money, your Honor.

The Court: When you had this witness on direct examination I thought you elicited from him all of the drawings for the whole period as to all of the entities with which he had any connection that had been—drawings that had been passed on to either Mr. Costello or Mrs. Costello.

(620) Mr. MacMahon: Only with the—in Crescent through and subsequent to January 1, 1946. Mr. Fennelly on his cross-examination went into the total amounts prior to that day, and I simply now wish to identify those more specifically than was done on cross-examination.

The Court: Let me just check a minute, now. Going in prior to 1946?

Mr. MacMahon: Yes, your Honor. Mr. Fennelly did that on cross-examination.

The Court: Yes. Overruled.

(Government's Exhibits 193 through 193-N marked for identification and received in evidence.)

(Government's Exhibits 193-O and 193-P received in evidence.)

Q. Mr. Murphy, I show you Government's Exhibit 193 in evidence and I ask you if that is a check to Loretta Costello for $1,288.89. A. Yes, sir.

Q. Crescent Amusement Company. A. Crescent Music Company.

Q. And what is the date of that check? A. September 15, 1944.

Q. Would you look at the back of the check, Mr. Murphy, and tell me what happened to the money represented by that check? A. Mrs. Costello endorsed the check (621) to the new partnership of Crescent Music Company and it was deposited in that account.

Q. Deposited it in the account of Crescent Music Company? A. Crescent Music Company, 50 per cent partnership.

Q. I show you Government's Exhibit 193-N for identification, Mr. Murphy, and ask you what the date and the amount of that check is. A. The date is September 28, 1944, and the amount is $700.

Q. Is that payable to Mrs. Loretta Costello? A. That is payable in cash.

Q. What does that check represent? A. I would have to check the records.

Q. Would you check your records? A. I will need the cash book.

Q. Let the record show I hand Mr. Murphy Exhibit 114 for identification, which is the cash book of Crescent Music Company. I also hand you Defendant's Exhibit T, Mr. Murphy, which may help you in that explanation. A. This refers to the check of $1,288.89. This check is drawn to cash and it is half charged to Mr. Kastel and half charged to Mrs. Costello.

Q. So that Mrs. Costello received half of the cash, half of the $700 cash?

(622) Mr. Fennelly: I object to that. That isn't what the witness said. He said it wasn't charged to her, and it appears on the deposit ticket it was deposited to the account of Crescent Music Company.

The Witness: That is right, for deposit, Crescent Music Company.

Q. Referring now to Government's Exhibit 193— A. 193.

Q. (Continuing)—N. A. N.

Q. And half of that was charged to Mrs. Costello on the books of Crescent Music Company, is that right? A. Half of that was charged into the capital account of Mrs. Costello on the Crescent Music Company books.

Q. That is $350? A. $350.

Q. Under what date? A. The date is September 28, 1944.

Q. Mr. Murphy, I show you Government's Exhibit 193-M. A. That is a check of Crescent Music Company dated November 2, 1944, drawn to Mrs. Loretta Costello, in the amount of $3,250, marked "October '44 distribution."

Q. And the endorsement on the back of that check? A. This is by Loretta Costello, Loretta B. Costello.

Q. I show you Government's Exhibit 193-L for identification. A. That is a check of Crescent Music Company, dated December 1, 1944, drawn to Mrs. (623) Loretta Costello, in the amount of $2,000, and marked "Account November distribution."

Q. I show you Government's Exhibit 193-K. Can you tell me what that is? A. That is a check of Crescent

Music Company, dated January 3, 1945, drawn to Mrs. Loretta Costello in the amount of $2,000.

Q. And the endorsement on that? A. Mrs. Loretta Costello.

Q. I show you Government's Exhibit 193-J in evidence. What is that? A. That is a check of Crescent Music Company, dated February 5, 1945, drawn to the order of Mrs. Loretta Costello, in the amount of $2,000, marked "January, 1945."

Q. The endorsement on the back of that? A. Mrs. Loretta Costello.

Q. I show you Government's Exhibit 193-I for identification. A. That is a check of Crescent Musice Company, dated March 2, 1945, payable to the order of Mrs. Loretta Costello in the amount of $2,000.

Q. And the endorsement on the back? A. Mrs. Loretta Costello.

Q. I show you Government's Exhibit 193-H in evidence. A. That is a check of Crescent Music Company dated April 3, 1945, payable to Mrs. Loretta Costello (624) in the amount of $1,500.

Q. What does that represent? A. I think it is a drawing. That is charged to her drawing account.

Q. Is that also true of Government's Exhibit 193-M, 193-L, 193-K, 193-J and 193-I? A. Yes, sir, they are charged to her drawing account.

Q. I show you Government's Exhibit 193-G. Would you state what is shown on that? A. A check dated—of Crescent Music Company—dated May 2, 1945, payable to Mrs. Loretta Costello in the amount of $1,500, marked "In account April '45."

Q. Does that represent a distribution, a drawing? A. Yes, sir.

Q. What is the endorsement on the back of that check? A. Mrs. Loretta Costello.

Q. I show you Government's Exhibit 193-F for identification. A. That is a check of Crescent Music Company, dated June 1, 1945, payable to Mrs. Loretta Costello, in the amount of $2,000, marked, in the corner "May 1945."

Q. Is that also a distribution or drawing? A. Charged to her drawing account.

Q. What is the endorsement on the back? A. Mrs. Loretta Costello.

Q. I show you 193-E in evidence. A. Crescent Music (625) Company check dated August 2, 1945, payable to Mrs. Loretta Costello in the amount of $2,000.

Q. Is that also a drawing? A. Charged to her drawing account.

Q. What is the endorsement on the back of that? A. Mrs. Loretta Costello, Loretta B. Costello.

Q. I show you Government's Exhibit 193-D. A. Check of Crescent Music Company dated September 8, '45, payable to Loretta Costello in the amount of $2,000.

Q. Is that also charged to her drawing account? A. Charged to her drawing account.

Q. What is the endorsement? A. Loretta Costello.

Q. I show you Government's Exhibit 193-C for identification. A. Check dated October—

Mr. Fennelly: Your Honor, I dislike objecting, but I would like to know what this is all about. The books are here, the checks are here, and all been gone into. The witness testified what her drawings were.

The Court: Have you got an objection?

Mr. Fennelly: Pardon?

The Court: Do you want to make objection?

Mr. Fennelly: I think it is a waste of time—I don't know whether that is a legal objection. I suppose (626) we can go over it but it has been—

The Court: If it is—

Mr. Fennelly: —repetitious.

The Court: If it is, we have been sitting a great deal in the last two weeks.

You may go ahead.

A. Check of Crescent Music Company dated October 2, 1945, payable to Mrs. Loretta Costello in the amount of $2,000.

Q. Is that charged to her drawing account? A. Charged to her drawing account.

Q. I show you Government's Exhibit 193-B. A. Check dated November 3, 1945, payable to Mrs. Loretta Costello in the amount of $2,000.

Q. Is that charged to her drawing account? A. Charged to her drawing account.

Q. What is the endorsement on the back? A. Mrs. Loretta Costello, Loretta B. Costello.

Q. I show you Government's Exhibit 193-A. A. Check dated December 1945, payable to Mrs. Loretta Costello in the amount of $2,000. Charged to her drawing account.

Q. I show you Government's Exhibit 193-O. A. That is stub of a check dated July 3, 1945, Mrs. Loretta Costello, in the amount of $1,500.

(627) Q. What is that charged to? A. Charged to her drawing account.

Q. I show you Government's Exhibit 193-P. A. That is check dated August 7, 1944, Mrs. Loretta Costello, July distribution, $3,400.

Q. Check stub, you mean? A. Check stub, yes.

Q. And what is that charged to? A. That is charged to the capital account of the partners in the partnership and in —on September 15, 1944, charged—listed as Mrs. Loretta Costello, $3,400—as a charge.

Q. Mr. Murphy, would you state whether these exhibits 193-A through P are all the drawings which Mrs. Loretta

Costello received from Crescent Amusement Company prior to January 1, 1946. A. Yes, I would say they were all of the drawings prior to January 1, '46.

Q. Mr. Murphy, referring to the $700 check, Government's Exhibit 193-N, was half of that money put back into the company, half of that $700, or not? A. I couldn't tell you.

Q. Would you check your books? A. I couldn't tell from there, Mr. MacMahon.

Q. Is there any entry in the book showing that it was? A. None that I can see.

(628) Q. And the check was cashed? A. The check probably was cashed out of funds of Crescent Music and then deposited in those funds to make up a deposit.

Q. Mr. Murphy, do you know the number of slot machines in the Beverley Country Club?

Mr. Fennelly: I object to it as immaterial.

The Court: Sustained.

Mr. MacMahon: Your Honor, on this, the casino summary sheets show slot machines as well as other gambling games, and the number of those machines is material to the type of records that are kept.

The Court: I don't see how. If you can lay a foundation for it, you may put it in.

Mr. MacMahon: Your Honor, it will be demonstrated by the next witness. I think it is equally important with the number of crap tables or roulette wheels which the witness has already testified about.

The Court: I thought we had gone into all that.

Do you intend to show from somebody what the average profit per machine was?

Mr. MacMahon: No, I intend to show the type of records kept for slot machines.

The Court: Haven't you done that? That is my only point. There isn't any mystery about it. (629)

But unless you are going to show, it seems to me, that there is some average that one ought to expect from a slot machine over a given period of time, that the number of machines is immaterial.

Mr. MacMahon: No, your Honor. Your Honor expressed some question the other day as to what the Government meant when it referred to underlying records, and the number of machines has to do with that query of your Honor's.

The Court: All right; if you say it has, I will accept your representation. I don't see it myself. You may go ahead.

Q. You may answer, Mr. Murphy. A. To the best of my knowledge, the application was for 19 machines.

Q. Mr. Murphy—

The Court: Wait a minute. What, the application?

Mr. Fennelly: I move to strike out the answer. I don't think it is responsive.

The Court: I don't understand it. I can't tell whether it is responsive or not. The question was, do you know how many machines were in the Beverley Country Club.

The Witness: Your Honor, for an actual count, no, but I do know that there were 19 machines listed (630) on the application.

The Court: What application?

The Witness: For license.

The Court: Oh, that is the application you mean?

The Witness: Yes.

The Court: I will allow it to stand.

Q. Mr. Murphy, did you yourself prepare the casino summary sheets, which are Government's Exhibits 172-A, B, C, D and E? A. No, sir.

Q. Did you yourself prepare the Louisiana Mint weekly reports? A. No, sir.

Q. Which are Government's Exhibit 194. A. No, sir.

Mr. MacMahon: That is all.

Recross Examination by Mr. Fennelly:

Q. Mr. Murphy, the cashier at the Beverley was a man named Tanico? A. Yes, sir, he was one of them.

Q. And was he the principal one? A. He was there for quite a while. I would say yes, he was there from '47, I believe.

Q. Was he subpoenaed up here, too? A. Yes, sir.

Mr. MacMahon: I object to that, your Honor.

Q. Have you seen him here?

The Court: The answer is in. What was the next (631) question?

(Question read)

Mr. MacMahon: I object to it as immaterial.
The Court: Sustained.

Q. Have you seen him in the witness room since you have been here?

Mr. MacMahon: I object to it as immaterial.
The Court: Sustained.

Q. And it was Tanico that, during the course of his employment, prepared these summary sheets, was it not? A. Yes, sir.

The Court: What is the man's name?

Mr. Fennelly: Tanico, T-a-n-i-c-o, I believe.

Q. About this item of 10,000—this distribution in January, 1946, of $10,125—

Mr. MacMahon: Your Honor, I object to the form of the question.

The Court: There hasn't been a question yet, has there? I didn't understand there was a question. Didn't Mr. Fennelly just say, "About this distribution"? Now he is going to ask a question about it. All right, go ahead.

Ten thousand what?

Mr. Fennellly: $10,125.

The Court: Going back into that again?

(632) Mr. Fennelly: Yes.

The Court: All right.

Mr. Fennelly: In fact, I am glad the Prosecutor brought it up. I think I overlooked it a little.

Could I have those checks that you just showed Mr. Murphy?

(Papers handed to Mr. Fennelly)

Mr. Fennelly: May I come up here (indicating witness stand?)

The Court: You may.

Just a minute. Let me hear that question or remark with which the question was commenced.

(Record read)

Q. Now, wasn't it the practice to make the distribution the month subsequent to the time that the amount of profit

was arrived at? A. I don't quite follow you on that, Mr. Fennelly.

Q. If you had a profit, for example, on your—after working on the papers, say, for the month of December, 1945, wasn't it the practice to make that distribution the next month? A. I couldn't answer that. I would render a report, and that was all.

Q. While we were referring to Louisiana—

The Court: Do you mean you don't know what the (633) practice was? Do you actually mean you don't know what the practice was in connection with distributions?

The Witness: Every month they would make a distribution, your Honor. I mean, that is what the records show, and they did it every month.

Q. But sometimes you would, in fact, make the distribution the succeeding month, wouldn't you, for the month prior? A. If I could have the books, I would show you what is there.

Q. What we are talking about is Crescent, but even on that—the Louisiana; but you even did that in connection with Crescent, didn't you? A. They made a distribution monthly, there is no question about it, for many months, and then it was stopped in Crescent.

Q. For example, let me just take Crescent, and take one of the Government's Exhibits, 193-F, which is check dated June, 1945. Doesn't it appear that that is a distribution for May, 1945, right on the front of the check? A. Yes, sir, that is what the check says.

Q. So that the succeeding month you made the distribution for the earnings of the month before, right? A. This is Crescent Music.

Q. I know that, sir. A. And that is—

(634) Q. I know it is Crescent Music. That is what I am

showing you, that on Crescent you did make distributions in June for earnings in May, is that right? A. That is right.

Q. And we will take another one, Government's Exhibit 193, which is a check dated May, 1945. It shows in ink on there that was a distribution for the month of April. A. That is right.

Q. Let us come to your ledger about this 22½ per cent account for Frank Costello in Louisiana Mint.

The Court: Somebody had better get those checks out of there before we have a problem of finding them (indicating).

A. All right, sir.

Q. Now, it appears on that account, does it not, under date of January, 1946, that there was distributed in December and January $10,125. A. That is right, sir.

Q. You cannot tell us whether or not all of that money was distributed in January, can you? A. I cannot, sir.

Q. You are not certain that any of it was distributed in December? A. I can't tell you that, sir.

Q. It might all have been distributed in January? (635)

A. It might have.

Q. And you didn't send that to Mr. Costello by check, did you? A. I would have to check the records on that. I mean, I know any moneys I got I sent by check.

Mr. Fennelly: Would the Government give me please, the checks that you let me have the other day that weren't marked?

(Papers handed to Mr. Fennelly)

Mr. Fennelly: Better mark these in four batches.

(Marked Defendant's Exhibit AA through DD, for identification.)

Mr. Fennelly: Could I have Exhibit 46, please?

(Exhibit handed to Mr. Fennelly).

Q. The Government has produced these checks which have been marked Defendant's Exhibits AA, BB, CC, and DD. Would you look at those, please, sir, and tell me whether or not you find any payment to Mr. Costello in December, 1945, or in January, 1946—

Mr. MacMahon: Your Honor, may those checks—

Q. (Continuing)—in the total sum of $10,125.

Mr. MacMahon: I object to this unless the checks are put in evidence.

The Court: Unless they what?

Mr. MacMahon: The checks are offered in evidence. (636) The checks are not in evidence at this point.

Mr. Fennelly: I would suggest that the Prosecutor has been examining for two weeks from documents not in evidence.

The Court: I will allow it.

Let me see them just a moment, the checks marked for identification.

(Witness hands papers to the Court)

The Court: What checks did you ask him to look at? I understood you to ask him to look at four, AA through DD.

Mr. Fennelly: There are several batches. The only

ones we are concerned with are the December '45 and January '46.

The Court: Let me hear the question.

Do these, AA through DD, do they show something? Is that what you are asking him?

Mr. Fennelly: Yes, I want to find out whether they show any payment.

The Court: I sustain the objection.

Q. Will you look at these exhibits and tell me whether or not you find any payment to Mr. Costello.

Mr. MacMahon: I object, your Honor.

The Court: Sustained.

Q. Mr. Murphy, would you look at the books of the Louisiana Mint Company and tell me whether or not any— (637) tell me what payments were made from December '45 through the whole year of '46. A. There is that same journal entry, January 31, for December and January, showing $10,125; February 28th there is one for $5,625; March 31st there is one for $5,625; April 30th there is one for $4,500.

Q. I show you Defendant's Exhibit AA and I ask you whether those checks correspond to the same amount to any of the items which you have just read as having been paid from your books.

Mr. MacMahon: I object to the question.

The Court: Overruled.

Mr. MacMahon: Unless the checks are in evidence.

The Court: Overruled.

A. Check dated February 14th—

Q. Excuse me.

The Court: Just bear in mind that you are asked

a question whether any check is in an amount equal to any amount you read off from the ledger. The answer to that is—

The Witness: Yes.

The Court: —yes or no.

The Witness: Yes.

The Court: All right.

(638) Mr. Fennelly: I will offer Defendant's Exhibit AA.

Mr. MacMahon: No objection.

(Marked Defendant's Exhibit AA in evidence.)

Q. Mr. Murphy, did you say there was, according to your book, a distribution to Mr. Costello, Louisiana Mint, in February, 1948? A. No, sir.

Q. '46? A. Yes, sir.

Q. And the amount of it? A. $5,625.

Q. And Defendant's Exhibit AA is the first check, a check for the same amount, dated February, 1946? A. Yes, sir.

Mr. MacMahon: Same objection, unless—

The Court: This is in evidence.

Mr. MacMahon: Oh, it is? I didn't understand that AA was.

The Court: You just said you had no objection to AA.

Mr. MacMahon: No. I didn't understand he was referring to AA.

The Court: He says this is the first of the checks marked AA.

Mr. Fennelly: Yes.

Mr. MacMahon: Yes.

The Court: That is for $5,625?

The Witness: $5,625.

(639) The Court: What is its date?
The Witness: February 14, 1946.
The Court: All right.

Q. I show you Government's Exhibit 40, which is Mr. Costello's bank account, and call your attention to a deposit February 16, $5,625, which was the same amount, is that right? A. Same amount as this check, yes.

Q. Now, what was the next distribution to Mr. Costello according to your books of Louisiana Mint Company after February, 1946? A. March, 1946.

Q. For how much was that? A. $5,625.

Q. Is there a check there, one of the two, on Exhibit AA for that amount? A. Check dated March 4, 1946, in the amount of $5,625.

Q. Now I ask you to look at Government's Exhibit 40 which is Mr. Costello's bank account and ask you if you find a deposit of that item. What is the date of it? A. March.

The Court: March 4th, wasn't it?
The Witness: March 4th.

Q. All right. What is the next item? A. April, 1946, for $4,500.

Mr. Fennelly: Would the Government let me have the deposit tickets, please, on Mr. Costello's account?

(640) Mr. MacMahon: Your Honor, we might save some time here. I am perfectly willing to concede in behalf of the Government that every check referred to here went into Mr. Costello's bank account.

Mr. Fennelly: That is two payments of $5,000—

Mr. MacMahon: If you refer to your exhibits, all

these exhibits you have just marked, if you will offer them in evidence I will concede that they went into the bank account of Frank Costello.

Mr. Fennelly: You haven't got one for $4,500, have you?

Mr. MacMahon: You have them all, Mr. Fennelly.

Mr. Fennelly: I haven't looked at them. But if you will let me have the deposit ticket I will trace the item.

Q. Now, I show you Government's Exhibit 41, which is a deposit ticket for Frank Costello, April 15, 1945, shows a check for $4,500, does it not? A. April 15, '46.

Q. '46, yes. Did I say '45? I meant '46. On what bank was that check drawn, according to the deposit ticket? A. Deposit of a check for $4,500 on the Progressive Industrial Bank of New Orleans.

Q. I would like you to look at Mr. Costello's bank account and tell me whether any deposit was made in his (641) account between October, 1945, and April—February 16, 1946. A. Between what date, sir?

Q. Between October 4, 1945, and February 16, 1945—'46.

The Court: Deposit in what amount? $4,500?

Mr. Fennelly: Deposit, any deposits at all.

A. It looks like there is a deposit on November 5, 1945, in the amount of $5,625.

Q. What date? A. November 5th.

Q. Oh, yes. Now, subsequent to November 5th, between November 5, 1945, and February 16, 1946, do you find any deposit? A. This photostat doesn't show any deposit.

Q. We do not find a deposit of $10,125? A. No, sir.

Q. Either in one check or two checks during that period? A. No, sir.

Mr. Fennelly: Could I have that file of work papers that the letter was put in?

Q. Mr. Murphy, I show you Government's Exhibit 147-A, which refers to a payment, does it not, sent to Mr. Costello, a check for $5,007.56? A. Yes, sir.

Q. From which had been deducted an amount of a hotel bill? A. Yes, sir.

Q. We had traced out the other day, had we not, the (642) fact that on the check referred to here that Mr. Costello had reported the amount in his income tax return, that is the total payment to him? A. He reported the total profits shown by the return.

Q. That is right. And the total profit on the check was, on that one, would be $5,625. Is that right? A. That would be his drawings.

Mr. MacMahon: I object to that, your Honor. It is not shown.

The Court: He is asking him.

Q. Now, at Beverley, when you had testified as to the number of tables, you did not mean that they were in operation, all of the tables, during the period that Beverley was open, did you? A. I wouldn't know, sir.

Q. How many hours a day was Beverley open, to the best of your knowledge? A. Well, to the best of my knowledge it was open for dinner at about 6 or 7 o'clock; as a rule it was closed around 12 or 1.

Q. During what part of that day was the casino opened? A. I couldn't answer that, sir; I wouldn't know.

Q. Didn't a man from your office work for a few weeks relieving Mr. Tanico in making up those daily summary

sheets? A. He asked me if he could do some (643) night work. I told him I didn't think it was right, but he went ahead and did it.

Q. Just for a couple of weeks? A. That is right.

Redirect Examination by Mr. MacMahon:

Q. Would you refer to Government's Exhibit 152 for identification, page 9 of the journal for Louisiana Mint Company, and read to the jury line 3? A. Line 3 says "Distributed in December, 1945, $25,000."

Mr. MacMahon: That is all, Mr. Murphy.

The Court: What year is that?

Mr. MacMahon: 1945, your Honor.

Mr. Fennelly: Nothing further, your Honor.

The Court: Any further questions?

Mr. Fennelly: Nothing further, your Honor.

The Court: Very well. You may step down. And we will step out for lunch.

Remember the instruction now, don't talk about the case among yourselves or with anybody else, and keep your minds completely open until all the evidence is in.

The Witness: Am I excused now?

The Court: The gentleman wants to know whether (644) he is excused, whether anybody wants him back.

Mr. Fennelly?

Mr. Fennelly: No, your Honor.

The Court: Mr. MacMahon?

Mr. MacMahon: No, your Honor.

The Court: It looks like you are off.

The Witness: Thank you, your Honor. I appreciate that.

Virgil G. Crabtree—for Government—Direct

(Witness excused.)

(Recess until 2.15 p.m.)

AFTERNOON SESSION

(Jury in box.)

Mr. MacMahon: The Government calls Virgil Crabtree.

VIRGIL G. CRABTREE, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. MacMahon:

Q. Where do you live, Mr. Crabtree? A. Phoenix, Arizona.

Q. What do you do? A. I am chief of the Intelligence Division for the State of Arizona.

(645) Q. Intelligence Division of what? A. Of the Internal Revenue Service.

Q. How long have you held that position? A. Since the last of 1946.

Q. What did you do before that? A. I was special agent with the Intelligence Division in Los Angeles and San Francisco.

Q. How long have you been with the Bureau of Internal Revenue? A. Since the last of 1937.

Q. In the course of your duties have you had experience in investigating gambling enterprises? A. I have.

Q. Would you state what that experience has been? A. During the period from March, 1952, to November, 1952, I was in charge of a special detail of six special agents and four Internal Revenue agents, engaged with the investigation of casinos in the state of Nevada.

Q. And would you tell me what the purpose of that investigation was?

Mr. Fennelly: I object to it as immaterial and irrelevant.

The Court: Overruled.

Q. Proceed. A. The purpose of the detail was to determine the method of gambling casinos in Nevada and to also determine the type of bookkeeping records (646) and other records kept by the casinos to reflect their operations.

Q. When you say the method of gambling casinos, what do you mean by that? A. Well, the type of games they used in the casinos, the manner in which the employees handled them, with particular regard to the records kept concerning the games.

Q. Anything to do with the operations of the casino? A. Yes, as I say, the method of operation of the games, the number of employees used and, generally, the method of operation of casinos themselves.

Q. Would you tell the Court and jury the type of operations in a gambling casino which has crap tables, black-jack games, roulette wheels, and the type of records that are kept in the course of the business of operating and running those games?

Mr. Fennelly: I object to it, your Honor, as irrelevant and immaterial, what they did in November—March, 1952, to November, 1953, in the State of Nevada.

The Court: Sustained.

Mr. MacMahon: Your Honor, this has to do with the type of records that are kept in gambling casinos, and I submit to your Honor that it is relevant particularly to your Honor's inquiry the other day.

The Court: It may be, if you lay a foundation (647) for it, but as of now you haven't.

Q. Are you familiar, Mr. Crabtree, with the type of records kept by gambling casinos? A. Yes.

Q. Would you state what types—

The Court: You mean you are familiar with the types of records kept by gambling casinos in Nevada?

The Witness: That is correct.

The Court: Did you ever investigate gambling casinos in New Orleans?

The Witness: No, sir.

The Court: Do you know in any way from your background whether or not there is a practice that is general in the running of gambling casinos wherever they are located?

The Witness: Not of my own knowledge, no, sir. I do by inquiry of people who supply gambling records, your Honor.

Q. Have you made inquiry of people who supply gambling records to casinos throughout the country? A. Yes.

Mr. Fennelly: I object to that as irrelevant and immaterial.

The Court: The answer is yes.

Q. Are you familiar with the types of accounting rec-

ords so supplied throughout the country for gambling (648) casinos? A. I am.

Q. Would you state what types of records are kept by gambling casinos?

Mr. Fennelly: I object to it as irrelevant and immaterial.

The Court: Sustained, unless he gives us a little more detail about it.

Q. What inquiry did you make and where, Mr. Crabtree? A. I made inquiry of the Kayco Company in Los Angeles, who does specialize in providing records to gambling casinos.

Q. Where do they supply those gambling records? A. Well, during the period of time that I was inquiring they were supplying them only in Nevada because it is the only place I know of that casinos were operating.

Q. Are you familiar as an accountant with the type of underlying records for gambling casinos?

Mr. Fennelly: I object to that, your Honor, as—

The Court: I will allow him to answer it, but it seems to me to be repetitious because he has already said he is familiar only with those covered in Nevada.

Mr. MacMahon: I submit it doesn't make any difference whether the operations are in Nevada or in (649) New Orleans. There are certain types of records—

The Court: No other type.

Mr. MacMahon: —required to be kept.

The Court: If some witness is competent to testify what they did, what was the practice in New Orleans, if there is some witness competent to testify that there was a common practice in New

Orleans and Nevada and other places where they are run, I don't know whether it is or not, it may very well be, but there is no foundation now for what you want this man to testify to, as I understand it.

Mr. MacMahon: He can only testify as to what the common practice was where he investigated in Las Vegas.

The Court: All right, but unless there is some connection shown between what happened in Las Vegas and New Orleans, then it is immaterial.

Mr. MacMahon: There is some relation, your Honor.

The Court: If there is, you may show it.

Q. Mr. Crabtree, I show you Government's Exhibit 172-A in evidence, and I ask you if you have seen, from other gambling casinos, records similar to that one? A. I have.

Mr. Fennelly: I object to it as irrelevant and immaterial and move to strike out the answer.

The Court: Overruled. The motion is denied.

(650) Q. Where did you see a record similar to that? A. Las Vegas—

Mr. Fennelly: I object.

A. —Nevada.

Mr. Fennelly: Irrelevant and immaterial.

The Court: Overruled.

A. (Continuing) This is what is referred to as a casino summary sheet.

Q. What type of records underly Government's Exhibit 172-A, where you have seen them?

Mr. Fennelly: I object to that; what he has seen in Reno, Nevada, after March, 1952, is wholly irrelevant and immaterial.

The Court: Sustained.

Mr. MacMahon: Your Honor, I submit that the witness has said that what he has seen in Las Vegas is the same type of record he has in his hand, 172-A, and that there are certain underlying records that go with that.

The Court: I have ruled.

Q. How far back did the records go that you saw in Nevada in point of time? A. In two casinos back to 1947; in another casino to '48.

Q. Referring to those records back in '47 and '8 and (651) to Government's Exhibit 172-A, did you see records corresponding to Government's Exhibit 172-A?

Mr. Fennelly: I object, your Honor, to what he saw out in Reno, Nevada, in 1952.

The Court: I will allow him to state.

A. I did see records similar to this, in other words, casino summary sheet.

The Court: You mean you saw records filed on papers that were in that form?

The Witness: Yes, sir.

The Court: Form of 174, isn't it,—174-A?

The Witness: 172-A.

The Court: 172-A.

Q. Similar to that? A. That is correct.

Q. Would you state what kind of records are kept underlying Government's Exhibit 172-A in the type of records you saw in Las Vegas?

Mr. Fennelly: I object to it, to what they did in Reno, Nevada. Operations in Reno, Nevada, go around the clock. You can walk in at 2 o'clock in the morning and all day long for 24 hours and have no relation to a situation such as the Beverley Club, which operated for a few hours in connection with a restaurant.

The Court: What is the question?

(Question read)

(652) The Court: Sustained.

Q. Mr. Crabtree, the witness Mr. Murphy has stated that there would have to be memoranda underlying the entries shown in Government's Exhibit 172-A for identification.

Are you able to state from your experience what kind of memoranda underlie those entries?

Mr. Fennelly: I object to that, your Honor.

The Court: On what ground?

Mr. Fennelly: The witness—

The Court: What?

Mr. Fennelly: The witness has testified not as to any experience whatsoever in the State of Louisiana. He has testified to experience in the State of Nevada.

The Court: Sustained.

Q. Mr. Crabtree, have you examined Government's Exhibit 17?

The Court: Pardon me, Mr. MacMahon. My recollection is not clear. Would you refresh me? Was Mr. Murphy asked what kind of records would have been required?

Colloquy

Mr. MacMahon: I asked him, your Honor, in reference to Government's Exhibit 172-A, B, C, D, and E, the in and out columns on there, whether it was necessary to have underlying memoranda and he answered that it was.

(653) The Court: Was he asked what kind?

Mr. MacMahon: He was not asked what kind.

The Court: I thought not. All right.

Mr. Fennelly: Nor did he say what it was necessary for. That was not pursued either, your Honor.

Mr. MacMahon: He said to arrive at the figures shown on that sheet, your Honor. That was pursued.

The Court: All right.

Q. Have you examined Government's Exhibit 172-A?

A. I have.

Q. Were you able to verify any of the figures shown on it?

Mr. Fennelly: Just a minute. I object to that, your Honor.

The Court: Sustained.

Mr. MacMahon: That is all, Mr. Crabtree.

(Witness excused)

Mr. Pierpoint: Your Honor, we had a couple of matters left open while the witness, Mr. Murphy, was on the stand. One of them had to do with two tax returns of the Crescent Music for the fiscal year ending 7-31-44 and for a short period ending 9-15-44. Secondary evidence was admitted concerning those returns. We volunteered to procure a certificate that they had been destroyed, and I offer such a certificate at this (654) time.

Colloquy

Mr. Fennelly: No objection.

(Marked Government's Exhibit 194 in evidence.)

Mr. Fennelly: The copies of the returns are now in evidence through Mr. Murphy's file.

The Court: Yes.

Mr. Pierpoint: That is correct. And we are fulfilling our promise.

Your Honor, we also agreed to produce a certificate with respect to the partnership returns for the Philip Kastel partnership for the years 1939 and 1940, a certificate of destruction of those returns. Secondary evidence of those returns was admitted in evidence, and I have such a certificate.

(Marked Government's Exhibit 195 in evidence.)

Mr. Pierpoint: Your Honor, at this time the Government produces the check stub books and the canceled checks of Crescent Music Company, in addition to those that have already been in the court room, throughout its life. The Government states that there are no check stubs or canceled checks in this collection dating behind 1944. However, these are all that were received pursuant to the subpoenas.

The Court: You say behind 1944. Do you mean there are none for 1945?

(655) Mr. Pierpoint: None for 1943. We have them from 1944 on.

The Court: Let the box be marked.

(Marked Government's Exhibit 196 for identification.)

The Court: That covers, then, both the partnership and the corporation.

Mr. Pierpoint: That is correct.

The Government calls Elvin D. Matheny.

The Court: Pardon me. What period do they cover? From 1944 through 1949?

Mr. Pierpoint: Through 1948. The assets were sold in 1948.

E. D. MATHENY, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Pierpoint:

Q. Mr. Matheny, where do you live? A. I live in Jackson, Mississippi.

Q. What do you do? A. I am chief of the audit division of the Director's Office.

Q. The Director's Office of what? A. Internal Revenue, District of Mississippi.

Q. Now, when did you first join the Internal Revenue (656) Service, Mr. Matheny? A. May 1, 1922.

Q. For how long have you been a revenue agent? A. Since October 15, 1933.

Q. What have your duties been since that time? A. For approximately 20 years I was an examining officer in the field.

Q. What were your duties as examining officer in the field? A. To examine the books and records of individuals, corporations, partnerships and fiduciary taxpayers.

Q. So that you are an accountant? A. Yes, sir.

Q. Now, in the course of your official duties during the year 1938 did you have occasion to examine the books and records of the Bayou Novelty Company? A. I did.

Q. Where did you make this examination, Mr. Matheny? A. The examination was made in an accountant's office, John D. Murphy's office.

Q. Mr. John D. Murphy is not the Mr. Murphy we have had on the stand here? A. No, sir. He is deceased.

Q. Was Mr. Murphy the accountant for Bayou Novelty Company? A. Yes.

Q. Did he sign the tax returns of the Bayou Novelty Company? A. He did.

Q. When you examined the books and records of the (657) Bayou Novelty Company, did you have occasion to make transcripts of certain of the accounts? A. Yes, sir.

(Marked Government's Exhibits 197 and 197-A for identification.)

Q. Mr. Matheny, I show you Government's Exhibit 197 for identification and Government's Exhibit 197-A for identification and ask you if you can tell me what they are.

The Court: Without telling us anything that is in them, first tell us what they are. They are sheets that were apparently taken from some larger book, are they?

The Witness: These are transcripts that I made from the general ledger of the Bayou Novelty Company.

The Court: Very well.

Q. And you made those transcripts in the offices of the accountant for the Bayou Novelty Company? A. That is correct.

Q. They are true and accurate copies of the books of the Bayou Novelty Company? A. With respect to these accounts, yes, sir.

E. D. Matheny—for Government—Preliminary Cross

Mr. Pierpoint: The Government offers Government's Exhibit 197 for identification and 197-A for identification. The Government offers only the portion at the top of the page.

Mr. Fennelly: May I examine preliminarily on this?

(658) The Court: Yes.

Preliminary Cross Examination by Mr. Fennelly:

Q. Sir, this is not an exact copy of the ledger sheet of Bayou, is it? A. It is, except for the lining.

Q. Well, now, wouldn't the and didn't the Bayou ledger account have a notation to show where that is entered, for instance, a relation to journal; cash book? A. No, sir.

Q. It did not? A. It did not.

Q. It had nothing on—

The Court: Keep your voice up, will you, please, Mr. Witness?

Q. It had nothing on the account except what you have here? A. That is correct.

Q. It didn't even have debit and credit on the top? A. It had what is customarily known as a ledger sheet without headings over the columns.

Q. No heading on the columns? A. That is right.

Q. You copied this exactly as it appeared on that sheet? A. Except that was in longhand and I printed this on the typewriter.

Q. Yes, but there were no notations showing any references to any cash book or journal? A. That is correct.

(659) Mr. Fennelly: I object to them as incompetent, irrelevant and immaterial.

The Court: What was the period—

E. D. Matheny—for Government—Preliminary Cross

Mr. Fennelly: May I also ask—

The Court: You may, if you want to ask another question.

By Mr. Fennelly:

Q. Where did you get these sheets from, now, before they came here? A. I believe they came from the special agents files.

Q. And was there a report attached to it that these had been torn out of? A. No, sir.

Q. What were they stapled to? A. They were stapled—those holes were punched during the course of the examination and I kept my papers in order at that time.

Q. There is an indication of holes in the side here indicating that they were stapled on to something. What were they stapled on to? A. I cannot answer that.

Q. You didn't see them stapled on to anything? A. Not—

Q. Did you take them out of the file? A. I took those out of the file, yes, sir.

Q. What was attached to them? A. According to my best recollection, one of my work sheets.

(660) Q. And when did you take them out of the file? A. Within the last three weeks.

Q. Have you got that work sheet with you? A. I don't have it in the court room, and I couldn't identify the particular work sheet to which it might have been attached.

Q. And this is only three weeks ago? A. Yes, sir.

Q. And yet you now tell us that you copied this. When did you make—

Mr. Pierpoint: I object to this, your Honor.

The Court: Sustained.

Let me see them.

E. D. Matheny—for Government—Direct
E. D. Matheny—for Government—Preliminary Cross

(Handed to the Court)

The Court: Will counsel come up to the bench a minute?

(Conference at the bench between court and counsel off the record)

Direct Examination by Mr. Pierpoint (Continued):

Q. Now, Mr. Matheny, I show you Government's Exhibit 197 for identification and Government's Exhibit 197-A for identification.

Will you state to the Court and jury whether or not these are the only original capital accounts shown on the books of Bayou Novelty Company? A. That is correct.

(661) Mr. Pierpoint: The Government renews its offer, your Honor.

Mr. Fennelly: May I examine preliminarily?

Preliminary Cross Examination by Mr. Fennelly:

Q. And you made these exhibits for identification 197 and 197-A how many years ago? A. Those were made in the early part of 1938.

Q. Some 16 years ago? A. That is correct.

Mr. Pierpoint: I object to this line of questioning, your Honor. I believe it is proper cross examination, not proper on the voir dire.

The Court: I am going to allow it.

Q. Now, you are telling us that you remember that these were the only capital accounts in Bayou Novelty?

The Court: Sustained. That is argument, Mr. Fennelly. You may ask him any question you wish as the basis for an objection.

Mr. Fennelly: Same objection to the exhibit, sir, incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Fennelly: May I point out, your Honor, that the exhibits in evidence already show that there were other partners in Bayou Novelty, including Mr. Kastel, and it was in Mr. Kastel's interest in it that Costello had an interest; he had no interest in Brainard or (662) Geigerman.

The Court: Yes. That is the matter we were discussing up here, but the United States Attorney indicates that he is going to develop something on this, and of course that is his burden.

Mr. Pierpoint: Might I also point out that the witness has testified that these are the only capital accounts shown for Bayou Novelty.

The Court: Yes, he has, but as Mr. Fennelly points out, there is other evidence that indicates something different. That is a matter for argument which I am not going to dispose of now.

(Government's Exhibits 197 and 197-A for identification received in evidence.)

The Court: Didn't Mr. Murphy, the last witness, or the next-to-the-last witness testify about the various interests in the Bayou Novelty Company and what they amounted to?

Mr. Pierpoint: Not to my recollection, your Honor. That was in Pelican, I believe.

Mr. Fennelly: Bayou, too.

The Court: Not with respect to Bayou also? I thought he did.

Mr. Pierpoint: I don't believe so. Mr. Murphy testified that he did not keep the books of Bayou, that (663) he just had them in his custody.

The Court: All right.

By Mr. Pierpoint:

Q. Mr. Matheny, you have testified that these are the only two original capital accounts showing original capital contributions in the Bayou Novelty Company; is that correct? A. That is correct.

Q. Will you read the amounts and the dates of the capital contributions shown on those two exhibits? A. On Exhibit 197 the first entry shows August 1935 with a credit of $7,500.

Q. In whose name is that shown?

Mr. Fennelly: Just a minute. I object to that. It doesn't say anything of the kind on the exhibit, not a word of the credit on this exhibit. Would your Honor look at it?

The Court: What is the sense of arguing about it? Why not have Mr. Pierpoint pick up the exhibit and read it to the jury as to what is—

Mr. Pierpoint: Your Honor, may I—. Well, may I ask a question preliminarily?

The Court: You may.

Q. You are an accountant, Mr. Matheny? A. Yes, sir.

(664) Q. Now, there appears on Government's Exhibit 197-A at the top "H (Miller) Geigermian capital." Is that correct? A. That is correct.

Q. Then there appears in the left-hand side the date August 31, 1935; is that correct? A. That is correct.

Q. Now, over towards the middle of the page there appears the figure 7,500. A. Yes, sir.

Q. Now, as an accountant can you state what the particular position of those figures $7,500—what that position means? A. Yes, sir.

Q. Will you so state? A. Under a heading, general heading of capital account an entry at the right-hand side of the page would mean a credit to that account.

Q. Now, beneath the date August 31, 1935, there appears the date April 17, 1937, and reading across that line but not going as far to the right as the first figure $7,500, I find the figure $7,500 again.

Now, as an accountant, what does the position of that figure mean? A. That means the debit to the capital account and a withdrawal of the funds originally credited.

(665) Q. So that from this record you can testify that the record shows that by April 17, 1937 the original capital standing in the name of H. Geigerman with the Bayou Novelty Company had been withdrawn, is that correct? A. That is what the books show.

Q. Referring to Government's Exhibit 197 in evidence, that shows at the top G. R. Brainard, capital, shows a date, August 1935, and on the right-hand side it shows the figure 7,500, is that correct? A. That is correct.

Q. What does the position of that figure 7,500 indicate? A. Indicates a credit to the capital account.

Q. Then it appears April 17, 1937 and again the figure 7,500. What does the position of that $7,500 indicate? A. A debit to the capital account and a withdrawal of funds from the business.

Q. So that the capital standing in the name of G. R. Brainard was withdrawn from the Bayou Novelty Company—

Mr. Fennelly: Just a minute.

Q. —by April 17, 1937, is that correct.

Mr. Fennelly: I object to it, your Honor, as, first, leading and stating facts not in evidence.

The Court: You may reframe it.

(666) Does that indicate that the books show that in August 1937 $7,500 was withdrawn?

The Witness: Yes, sir.

The Court: All right.

Q. Is that the total capital standing in the name of— shown on that exhibit? A. That was the total of the original capital.

Q. Mr. Matheny, are you familiar with or were you familiar with the regulations concerning the filing of partnership tax returns in the period 1936, '37 and '38? A. Yes, sir.

Q. Were they substantially the same then as they are now? A. Substantially.

Q. Will you state what the regulations are with respect to the filing of tax returns by a partnership? A. In the first place, a partnership return is not a tax return. It is an information return. The Internal Revenue law requires the filing of this information return on Form 1065. A partnership may file either on a calendar year basis ending December 31 of any year or it may establish a fiscal accounting period which would be a period ending in—the last day of any other month.

Q. What figures must a partnership return include? A. They must include gross income, the expenses (667) and the distributive share of each partner.

Q. So if a partnership filed its return on a fiscal year basis, say, ending August 31, the income shown, gross income of the partnership shown and the distributive share of that income for each partner would be income that had been earned by August 31 of the particular year

in which the return is filed, is that correct? A. That is correct.

Q. Mr. Matheny, were you familiar with the regulations concerning tax returns filed by individuals reflecting income received from partnerships in the years 1936, 1937 and 1938; in that period? A. Yes, sir.

Q. Were the regulations the same—are they now the same as they were then substantially? A. Yes, sir.

Q. Will you state what those regulations are with respect to what income must be reflected on the individual taxpayer's return? A. If an individual, a member of a partnership, was reporting on a calendar year basis, he would be required to report in that calendar year return all of the distributive income shown by the partnership return for the fiscal year ending in the taxpayer's calendar year.

(668) Q. So that if a taxpayer filed a tax return for the calendar year, say, of '37, showing income received from a partnership whose fiscal year ended August 31, 1937, the income shown in the individual—partnership return would actually have been earned by 1937 even though the partner's return was not filed until some time in 1938? A. That is correct.

Q. Now, Mr. Matheny, in the period 1936, 1937 and 1938 was a partnership required to file an information return if the partnership was terminated by the death of a partner? A. That is correct.

Q. That return would reflect income earned up until the death of the partner? A. That is correct.

Q. Mr. Matheny, I show you Government's Exhibit 32, which is the partnership return of the Bayou Novelty Company for the fiscal year ended August 31, 1936; I show you Government's Exhibit 33, which is the partnership return of the Phil Kastel partnership for the calendar year 1936; and I show you Government's Exhibit 15, which

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is the personal income tax return, individual income tax return of Frank Costello for the calendar year 1936.

Will you state to the Court and jury the date upon which the income was earned by Bayou that is reflected in Frank Costello's 1936 return?

The Court: Let me have that question again?

(669) (Question read.)

The Court: 1936?

Mr. Pierpoint: Yes, the year is 1936.

A. This partnership return for the Bayou, which covers the period ending August 31, 1936, covers earnings from the period September 1, 1935 until August 31, 1936 and the distributive share of Philip Kastel is the sum of $30,390.12 of $121,560.46.

Q. Mr. Matheny, we have already had it in evidence that the sum shown for the Kastel partnership return—

Mr. Fenneliy: May the witness—the witness hasn't answered the question, and I move that he either complete the answer or strike out the answer.

The Court: Read the question.

(Question read.)

The Court: You were asked for a date.

The Witness: I believe I covered it, your Honor.

The Court: Would you do it again, please?

The Witness: Yes, sir. The return marked Government's Exhibit 32 shows a total net income of—

The Court: No, a date.

The Witness: The date? This return is for the period ending August 31, 1936.

The Court: So that whatever the income was, it was earned by that date, August 31?

(670) The Witness: Yes.

The Court: Is that your point, Mr. Fennelly?

Mr. Pierpoint: Your Honor, Mr. Charles B. Murphy was taken through these tax returns by counsel.

The Court: Just a minute. There is no question about that. The only point he raised was that when the witness was asked for a date, he gave, probably not the date, or, if he did, he added something to it, Mr. Fennelly insists that the answer ought to be responsive.

That we have got. We have got the date, August 31, 1936. You can go on from there.

Q. Mr. Matheny, will you refer to Government's Exhibit 15 in evidence and will you read from that exhibit the amount of the income shown as coming from the Philip Kastel partnership? A. Line 6 on that return shows, from the Philip Kastel, care of Charles B. Murphy, 400 Maritime Building, New Orleans, $78,955.83.

Mr. Pierpoint: Your Honor, at this time I request permission to read one question and one answer to the jury from Government's Exhibit 23.

The Court: You may.

Mr. Pierpoint: The question was asked—this is the Government's Exhibit 23, which is the question and (671) answer statement given by the defendant Costello on October 18, 1937 to Mr. Ronayne. He was asked this question:

"Q. Did you actually receive the full $78,000 as was reported on the partnership return for the year 1936?"

And the answer was, "Yes, sir."

Q. Mr. Matheny, I show you Government's Exhibit 34, which is the Bayou partnership return 1937, Exhibit 35, which is the—

The Court: 36?

Mr. Pierpoint: Phil Kastel partnership return for the calendar year '37.

The Court: Isn't that 34 the Bayou report? You said 36?

Mr. Pierpoint: I believe that was 33, your Honor.

The Court: 33 was Kastel's return, wasn't it?

Mr. Pierpoint: I beg your pardon.

The Court: You may be right. I just want to make sure in my own notes.

Mr. Pierpoint: 32 was the Bayou for '36, your Honor, 1936. 33 was the Philip Kastel return for '36. 34, I believe, is the Bayou return for '37. Government's Exhibit 35 is the Kastel partnership return for '35.

(672) The Court: '37?

Mr. Pierpoint: Government's Exhibit—

The Court: For '37?

Mr. Pierpoint: '37. I am sorry.

Government's Exhibit 14 is Frank Costello's individual return for the year '37.

Q. Will you state, first of all, Mr. Matheny, referring to Government's Exhibit 34, what period does that return actually cover? A. It covers the operations of the Bayou Novelty Company from September 1, 1936 until Brainard's death, either the 18th or 19th of June.

Q. Is it shown? I refer to the last page contained in Government's Exhibit 34. A. Yes, there is a notation,

"This partnership terminated on June 20, 1937 as the result of the death of Mr. Brainard, G. R. Brainard."

Q. So that all the income reported on that return was actually earned by June 20, 1937, is that correct? A. That is correct.

Q. And the amount of income shown on Government's Exhibit 34 as distributable to Philip Kastel is in the same amount reflected on Government's Exhibit 35, which is the Philip Kastel partnership return, is that correct? A. That is correct.

(673) Q. And all the income on the Philip Kastel partnership return distributable to Frank Costello is reflected on Costello's 1936 return, Government's Exhibit 14, is that correct?

The Court: That is '37?

Mr. Pierpoint: 1937, I beg your pardon.

A. That is correct.

Q. Mr. Matheny, at the time you examined the books and records of the Bayou Novelty Company did you make a transcript of any further account besides the one capital account which we have already seen? A. Yes.

(Marked Government's Exhibit 198 for identification.)

Q. Mr. Matheny, I show you Government's Exhibit 198 for identification and ask you if that is a transcript which you made from the books of the Bayou Novelty Company of an account shown on the books of the Bayou Novelty Company? A. Yes, sir.

Q. And it is a true and accurate transcript? A. Yes, sir. It is in my handwriting.

Q. And this was made in the offices of the accountant for the Bayou Novelty Company?

Mr. Fennelly: May the witness not be led, your Honor? Let him testify, and not the prosecutor.

The Court: He hasn't been led very much. (674) Save a little time. All right, go ahead.

A. This was made in Mr. Murphy's office.

Mr. Pierpoint: I offer Government's Exhibit 198 for identification, top part of one sheet only.

Mr. Fennelly: No objection.

Mr. Pierpoint: Your Honor, the Government offers only one portion of it here. I have a photostat with everything else except the Government's offer blocked out.

(Government's Exhibit 198 for identification received in evidence.)

Q. Now, Mr. Matheny, referring to Government's Exhibit 198 in evidence, will you state to the Court and jury what account that is a transcript of? A. That is a transcript of an account that may be either called capital account or drawing account. It was not headed. It was just headed "Phil Kastel."

Q. The account is carried in the name of Phil Kastel? A. That is correct.

Q. You say it could be either capital account or a drawing account?

Mr. Matheny, in order for an individual to have an interest in a partnership is it necessary that he put up any of the original capital? A. No, sir.

Q. He may be a member of a partnership without (675) having contributed any of the original capital? A. That is correct.

Q. Referring to the exhibit before you, Government's Exhibit 198—is it?